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IN THE

Supreme Court of the United States

October Term, 1949

No. 506

J. H. Crain and R. E. Lee Wilson, Jr., Trustees of Lee Wilson and Company, a Business Trust, *Petitioners*,

v.

The United States

On Petition for a Writ of Certiorari to the Court of Claims

REPLY OF PETITIONERS TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION.

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The brief for the United States in opposition to the petition for certiorari was served upon petitioners on February 18, 1950. Since it contains statements believed by petitioners to be the proper subject of a reply brief, this brief is being filed pursuant to paragraph 4(a) of Rule 38 of this Court.

THE STATEMENT MADE BY RESPONDENT.

On page 3 of its brief the Government says that for 1933—

> * * * petitioners allowed the share tenants to participate in the program only if a share tenant entitled to 75 per cent of the cotton would accept 66⅔ per cent of the government payment * * *.

The obvious implication of this curtailed statement is that the share tenant was unfairly treated. The true fact is directly to the contrary. Omitted from the Government's abbreviated statement regarding the division of this $20.00 payment are the following significant findings by the court below: (1) that the share tenant was saved the expense of picking the cotton ($4.50 per acre; R. 105, 107; cf. R. 194) and was given the use of the land rent-free for a corn crop (worth $12.00 per acre; R. 107, 108; cf. R. 195); also (2) that the actual division of this $20.00 was fully disclosed to the local government officials (R. 105-106; cf. R. 194-195); and (3) that an official interpretation of this ambiguous and "assuming" instruction was requested at the time by the local government officials and was refused by the Washington officials (R. 106; cf. R. 194).

Respondent also states (Br. 4) that petitioners received $29.16 per acre under an option provision and paid their tenants only on a basis of $20.00 per acre. To fairly present the picture on this point it should be noted that the tenants elected to take $20.00 per acre, which was paid them in 1933, and rejected the gamble in the cotton option plan (R. 111, 112-113; cf. R. 192), while the petitioners alone took *all the risk* of the option plan and did not receive all of their money until 1938 (R. 104, 109; cf. R. 192-193).

Petitioners submit that their position as to the 1933 program is well summarized in the dissenting opinion of Chief Judge Jones when he said (R. 195-196):

> The record is convincing that the plaintiffs worked more closely with those who were conducting the pro-

gram than did many of the large operators. In fact, some refused to comply in any way.

* * * * *

There were errors of calculation in those earlier years. These should have been and were corrected. There were also some honest mistakes of the rights under the law and regulations of that period. These, too, were corrected. But to permit employees [of the Government] to go prowling through the record of distant years *to find instances in which policies could be changed and thus avoid payment of admitted just claims* in later years, is beyond the power and authority of the Department. (Italics supplied.)

As to the year 1934 the Government in its brief (p. 4), glibly states that—

* * * petitioners had, contrary to the regulations, increased the amounts payable to them by a miscalculation of their base acreage. Petitioners also gave incorrect production figures as to the land described in each contract (R. 126-127).

Again the facts are over simplified to the point of distortion.

The record shows: that petitioners by telegram direct to Washington advised the Government that they were not satisfied to enter the program as originally outlined (R. 124); that a local official went to Washington to explain the peculiar situation in this area due to new lands being brought into production which prevented a fair base acreage (R. 123-124); and that thereafter the local government officials received a telegram which was considered by them as authority for accepting the contracts as submitted by plaintiff (R. 125, 127, 129). Moreover, the asserted discrepancies in the contracts were always known to all of the local government officials (R. 127, 130, 131).

In connection with the 1937 program, respondent summarily states that the petitioners were not paid because the Secretary of Agriculture found that the cotton acreage

planted by petitioners exceeded the base acreage allotted to them (Br. 5). Again respondent has made a one-sided translation of the record. The facts that the Secretary purportedly determined[1] are that "the areas actually worked by the Company were in performance" (R. 176) and that he would approve the action of the investigating committee in determining petitioners' total compliance by combining with their production the overproduction of various cash and clearing-lease tenants who did not participate in the program (R. 175). The only basis alleged for this merging of separate interests is that petitioners had adopted a scheme to defeat the purposes of the program (R. 83, 90). The Court of Claims found as a fact that the evidence did not show any such a scheme (R. 176). Since the premise of the Secretary of Agriculture is found to be unsupported, it logically follows that his merging of various production records is without authority.

REPLY TO THE ARGUMENT OF THE GOVERNMENT

1. The argument of the respondent is based on the assumption that the approval of the Acting Secretary of Agriculture of a "bases for settlement" (R. 118; cf. R. 190) automatically becomes a conclusive finding of fact upon the refusal of the citizen to accept the proposed settlement. Petitioners submit that such a "bases of settlement" in 1941 is not a finding which should supersede the statutory requirement of a finding of "substantial compliance" in order for the Secretary of Agriculture to disburse funds from the Supplemental Appropriation Act of February 11, 1936 (R. 140-141, 143; Pet. for Cert., p. 15).

Petitioners do not believe that the quotation from *United States v. Moorman* on which respondent relies (Br. 7) is in point. There is in the present case no dispute about the facts. The true facts have been known all along by the

[1] This determination was only for purposes of a compromise settlement (R. 118) as is pointed out in the dissenting opinion (R. 190).

local government officials. The question is rather whether the Secretary of Agriculture can refuse to interpret a vague 1933 instruction (R. 105-106); and can answer a specific 1934 problem in a way calculated to bring the producers into the program with the approval of the county officials; and then can a succeeding incumbent in 1941 repudiate what was done in good faith in the earlier years.

The Government next says (Br. 8):

> There was no finding in the Court of Claims that any determination as to the qualifications of petitioners for payment had been made by the Secretary prior to 1941 (R. 187).

The findings of that court show that certain payments were made to petitioners from the Supplemental Appropriation Act of February 11, 1936 (R. 140, 141, 143). That statute appropriated funds for payments to farmers where "there has been partial performance" under a contract with the proviso that (Pet. for Cert., p. 15):

> • • • the determination of the Secretary as to the correct base acreage and production figures (*regardless of the figures on which the contract was based*) and as to the person or persons entitled to receive such fair and equitable payments *shall be final and conclusive.* (Italics supplied.)

It is difficult under the foregoing language to see how the then Secretary of Agriculture could have made payments to the petitioners without having his 1936 findings as to "base acreage" become "final and conclusive" at that time "regardless of the figures on which the contract was based." Significantly, the Court of Claims was silent on this point.

The Government seeks to side-step this situation by next asserting that a full disclosure was not made to the Secretary (Br. 8). Petitioners not only personally sent a telegram to Washington, D. C. (R. 124), and helped to send a committee to Washington, D. C. (R. 124), but the county

officials were the representatives of the Secretary under the program (R. 121), and they fully understood the manner in which petitioners had handled the contracts (R. 125, 127; cf. R. 195).

With regard to the 1937 program, respondent asserts that petitioners must show that the alleged determination of the Secretary was "arbitrary or capricious" (Br. 9). Petitioners submit they have done so. As shown in discussing the facts, the only basis for combining petitioners' lands with those of their tenants was the unproved allegation that a scheme had been adopted to defeat the program (R. 83, 90). The Court of Claims found no such scheme (R. 176) and the Secretary found petitioners had not overproduced on their own land (R. 176). Absent any basis for adding other figures to those of the petitioners, the conclusion of the Secretary is both arbitrary and capricious.

2. Petitioners do not read 31 U. S. C. 74 as applying only to the Comptroller General. This statute permits the head of an "Executive Department" to obtain a revision of his accounts "within a year." It follows that the rationale of of the *Kruszewski* case applies with like force to the facts in the case at bar.

Petitioners, of course, do not agree that the Government can sustain its burden of proof on its set-off by merely offering in evidence a "bases of settlement" approved by the Acting Secretary of Agriculture (R. 118; cf. R. 190), when no such settlement has been made (R. 95).

CONCLUSION

The decision below by a divided court is believed to be erroneous. It conflicts in principle with the *Aycock-Lindsey* and *Kruszewski* decisions and is of such public importance as to warrant review by this Court.

Respectfully submitted,

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